IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
Criminal Application No. 1680 of 2006 in
CRIMINAL APPEAL NO.259/2006

Office Notes, Office Memoranda of Coram, : Appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

Mr. S.N. Mardikar, Adv. for the Appellant.
Mrs. K.S. Joshi, APP for the Respondent.

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Coram : K. J. ROHEE, J.
Dated : AUGUST 17, 2006.

Heard the learned counsel for the parties.

2. The appellant was serving as Head Constable at P.S. Kamthi. It is alleged that in the year 2000 he demanded bribe of Rs.2000/- from the complainant and accepted the said amount from the complainant for early submission of the charge sheet in the Court. The trial Court convicted the appellant for the offence punishable under Sections 7, 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 by order dated 25.4.2006. The appellant has challenged the said conviction and sentence by preferring the present appeal.

3. The appellant moved application for staying the conviction passed by the trial Court. The learned counsel for the appellant submitted that the trial Court was not justified in believing the evidence of panch no.1 who admitted to have acted as such in 4-5 cases. Thus he is

habitual witness. It was also tried to show that there is no trustworthy evidence against the appellant so as to convict him. It was, therefore, urged that the conviction should be stayed. In support of this plea, reliance was heavily placed on **G.M.Tank .vs. State of Gujrat and others (2006) 5 Supreme Court Cases 446 .** It was vehemently urged that the law laid down by the Apex Court in **K.C.Sareen .vs. C.B.I. Chandigarh 2001 AIR SCW 3339** would not be applicable to the present case.

4. It may be noted that in K.C.Sareen's case it has been observed by the Apex Court as under:-

> *"When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably.*
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> *When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public*

servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.

Though power to suspend an order of conviction is not alien to S.389(1) of Code, its exercise should be limited to very exceptional circumstances. The Court has a duty to look at all aspects including ramifications of keeping such conviction in abeyance. Therefore, when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal against conviction even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

5. It may be seen that K.C. Sareen's case was not referred to in the subsequent judgment of G.M.Tank's case. Even otherwise the facts of G.M.Tank's case are entirely different. In G.M.Tank's case the accused therein was dismissed after holding departmental inquiry against him on the charges of acquisition of movable and

immovable property disproportionate to his known sources of income. On the same facts he was prosecuted and the Criminal Court honourably acquitted him by holding that the prosecution failed to prove charges levelled against him. It is also important to note that the said order of acquittal was not further challenged by the State and that it became final and conclusive. It was found that it was a case of no evidence. On this background, it was thought necessary to stay the conviction. Obviously facts of G.M.Tank's case are totally different from that of the present case.

6. The appellant has failed to make out case for staying the conviction. The application is, therefore, dismissed.

7. The appellant is at liberty to move the Court for early hearing in case the appeal does not come up for hearing within six months.

JUDGE

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